



BOARD OF ADJUSTMENT

APPROVED MINUTES

March 27, 2018, 8:30 a.m.
Committee Room, 2nd Floor, City Hall
101 City Hall Plaza, Durham, NC

I. Call to Order

Chair deLacy called the meeting to order at 8:42 a.m.

II. Roll Call

Members Present:

Regina deLacy, Chair
Phillip Harris, Jr.
Michael Kriston
Randal Rogers
Alisa Thomas
Najuma Thorpe
Jacob Rogers, Designated Alternate
Fredrick Davis
Michael Schietzelt, Alternate

Members Absent:

None

Staff Present:

Amy Wolff, Planner
Bo Dobrzanski, Planning Supervisor
Joanne Gordon, Clerk
Don O'Toole, City Attorney's Office
Bryan Wardell, County Attorney's Office

III. Adjustments to the Agenda –Agenda item under IX.a. was moved to the beginning of the meeting agenda. Case B1700052 was moved from V.d to V.a the agenda.

IV. Swearing-In of Witnesses

Chair deLacy asked: Are there any Board members that would have any conflicts of interests with regard to the cases before us today? Chair deLacy then asked if there were any early dismissals. No conflicts of interest were noted.

Chair deLacy read the following statement:

This Board is a quasi-judicial Board of record and, as such, all testimony will be recorded. The proceedings of this Board will be governed by the Unified Development Ordinance, as recorded.

As Chair of the Durham Board of Adjustment, I would like to explain the procedures used for Board hearings. The hearings are quasi-judicial. The process is similar to a court proceeding. First, a staff member of the City-County Planning Department will present an overview of the case. Then the applicant presents its evidence. The opponents, if there are any, will present their evidence. The applicant may then present its rebuttal. Board members are asked to refrain from questions until each speaker has completed his or her presentation. All testimony is given under oath. In a few moments, I will give the oath to all witnesses as a group. All witnesses are asked to sign the roster at the podium if you have not done so.

Testimony should consist of facts each witness knows, not hearsay. All witnesses should come forward to the podium, and identify themselves each time they approach the podium.

Speak directly into the microphone so their testimony can be recorded on tape. Before each application, I will read the findings that must be made to approve an application, and any testimony should be relevant to the criteria that the Board uses to determine whether to approve an application.

Any written evidence or exhibits must be presented to the Chair (Vice Chair) and a determination will be made whether it should be accepted. Written evidence or exhibits can be inspected by the opposing party. All evidence, written or oral, or exhibits can be objected to.

Witnesses are subject to cross-examination. Opposing representatives will have an opportunity to question witnesses after all witnesses for the other side have testified. If you wish to cross-examine, you may raise your hand when I ask for other speakers in favor or against the application and I will recognize you. I would also like to remind everyone in attendance to be courteous and ask questions respectfully. If there are numerous people who will be providing the same or similar testimony either for or against an application, in the interest of time, I would request that you please select a representative to present that testimony.

I would like to note that Board members may have visited each site under consideration as part of their preparation for this meeting.

The Board will vote on each case after the presentation of all the evidence, for and against an application, and discussion among themselves concerning the case. North Carolina law requires that in order for an applicant's request to be granted for a City application before the Board, five (5) of the seven (7) voting Board members must approve the request. For a County variance request, North Carolina law requires that in order for an applicant's request to be granted, six (6) of the seven (7) voting Board members must approve the request. For other County requests, including applications for a minor special use permit, four (4) of the seven Board members, or a simple majority, must approve the request.

All decisions of this Board are subject to appeal to the Durham Superior Court. Anyone in the audience, other than the applicant, who wishes to receive a copy of the formal order issued by this Board on a particular case, must submit a written request for a copy of the order at this hearing. Forms for this purpose are available from the City-County Planning Staff.

V. New Business

- a. City Attorney analysis and clarifications regarding absent applicants.** – Don O'Toole from the City Attorney's Office gave the Board updated information regarding absent applicants.

VI. Hearing and Determination of Cases

- a. Case B1700052** – County: A minor special use permit for an educational facility (middle school) in a residential district. The subject site is located at 501, 505, and 717 Orange Factory Road, is zoned Residential Rural (RR) and in the Rural Tier.

Seated: Mr. Harris, Ms. deLacy, Mr. R. Rogers, Ms. Thomas, Mr. Kriston, Ms. Thorpe, Mr. F. Davis

Speakers: None

Staff Report: Staff announced that due to incorrect notification for this case, this case will be heard at the April 24 meeting.

MOTION: Mr. Kriston made a motion to open and close case **B1700052**, due to incorrect advertising. (Kriston, Davis 2nd)

ACTION: Approved, 7-0

b. Case B1700054 – City: A reasonable accommodation from the definition of family and the associated application fee. The subject site is located at 915 Brandon Road, is zoned Residential Suburban – 20 (RS-20) and in the Suburban Tier.

Seated: Mr. Harris, Ms. deLacy, Mr. R. Rogers, Ms. Thomas, Mr. Kriston, Ms. Thorpe, Mr. J. Rogers

Staff Report: Ms. Wolff presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, and or corrections that may be necessary. Staff added that a recommendation would not be made as a correction to the staff report.

Speakers: Mr. Greg Heafner, Mr. Tony Sowards, Mr. Paul Stevens spoke in support. Mr. George Scott, Ms. Thelma Glenn White, Mr. Lester Heyward, Ms. Neysa Heyward, Mr. James Pointer, Ms. Kendra Pressley and Ms. Helen Feathersome spoke in opposition.

MOTION: Mr. Kriston made a motion that case **B1700054**, An application for a **reasonable accommodation from the definition of family** on property located at **915 Brandon Road** has successfully met the applicable requirements of the Unified Development Ordinance and is hereby approved by the following conditions:

- Will be used by an individual or individuals with a disability or handicap protected under federal law;
- Is "reasonable." An accommodation is reasonable if it will not undermine the legitimate purposes and effects of existing zoning regulations, and if it will not impose significant financial and administrative burdens upon the city or county and/or constitute a substantial or fundamental alteration of the ordinance provisions; and
- Is "necessary." An accommodation is necessary if it will provide direct or meaningful therapeutic amelioration of the effects of the particular disability or handicap, and it will afford handicapped or disabled persons equal opportunity to enjoy and use housing in residential districts in the city or county.
- The improvements shall be substantially consistent with the plans submitted to the Board as part of the application.

(Kriston, Thomas 2nd)

ACTION: Approved 4-3 (Thorpe, R. Rogers, Davis voting No)

MOTION: Ms. Thomas made a motion that case **B1700054**, An application for **the associated application fee**, on property located at **915 Brandon Road** has not met the applicable requirements of the Unified Development Ordinance and is hereby denied (Thomas, Davis 2nd)

ACTION: Approved, 7-0 (Thomas, Davis, Harris, Kriston, deLacy, Thorpe, R. Rogers, voting No)

c. Case B1700053 – City: A minor special use permit to allow a day care facility in a residential district. The subject site is located at 1305 West Club Boulevard, is zoned Residential Urban – 5 (2) (RU-5(2)) and in the Urban Tier.

Seated: Mr. Harris, Ms. deLacy, Mr. R. Rogers, Ms. Thomas, Mr. Kriston, Ms. Thorpe, Mr. J. Rogers

Staff Report: Ms. Wolff notified the Board that this case had been withdrawn by the applicant.

d. Case B1800003 – City: A variance from the location requirements for an accessory structure. The subject site is located at 713 Brighton Road, is zoned Planned Development Residential 4.000 (PDR 4.000) and in the Suburban Tier.

Seated: Mr. Harris, Ms. deLacy, Mr. R. Rogers, Ms. Thomas, Mr. Kriston, Ms. Thorpe, Mr. J. Rogers

Staff Report: Ms. Wolff presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, and or corrections that may be necessary. Staff added that a recommendation would not be made as a correction to the staff report.

Speakers: Mr. Stephen MacLean spoke in support. No one spoke in opposition.

MOTION: Mr. Harris made a motion that case **B1800003**, An application for a **minor special use permit** on property located at **713 Brighton Road** has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted subject to the following conditions:

- The improvements shall be substantially consistent with the plans submitted to the Board as part of the application.

(Harris, R. Rogers 2nd)

ACTION: Approved, 7-0

VII. Approval of Summary Minutes from February 27, 2018

Motion: Approve the Minutes from February 27, 2018

Action: Motion carried, 7-0 (Kriston, Thorpe 2nd)

VIII. Approval of Orders

Case B1800003

Motion: Approve the order for case B1800003 (Kriston, Thomas 2nd)

Action: Motion carried, 7-0

IX. Old Business – None

X. New Business – Moved to beginning of Agenda

XI. Adjournment

The meeting adjourned at 12:17 p.m.

Respectfully Submitted,
Joanne Gordon, Clerk to the Board